

The opinion in support of the decision being entered today was not written  
for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte THOMAS BIRKHOELZER and JUERGEN VAUPEL

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Appeal No. 2005-2415  
Application No. 09/994,309

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HEARD: January 24, 2006

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Before FRANKFORT, CRAWFORD, and BAHR, Administrative Patent Judges.  
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 6,  
which are all of the claims pending in this application.

We REVERSE.

### BACKGROUND

The appellants' invention relates to an apparatus and method for determining a training unit based on the learning needs of a trainee, of the type having an input device, a data bank of all training modules and a selection device (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

### THE PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Tatsuoka	6,301,571	Oct. 9, 2001
Wall et al. (Wall)	6,371,765	Apr. 16, 2002
Cook et al. (Cook)	6,427,063	Jul. 30, 2002

### THE REJECTIONS

Claims 1 to 4 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Cook.

Claim 6 stands rejected as being anticipated under 35 U.S.C. § 102(e) by Wall.

Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over Cook in view of Tatsuoka.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed July 13, 2004) for the examiner's complete reasoning in support of the

rejections, and to the brief (filed April 15, 2004) for the appellants' arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1 to 4 under 35 U.S.C. § 102(e) as being anticipated by Cook. We initially note that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference.

Appellants' invention, as recited in claim 1, is an apparatus for automatically determining an individually adapted, non-prefabricated training unit. The training unit is generated from existing training modules (specification at page 2). The training modules are dependent on one another and these dependencies are stored in a data

bank (specification at page 5). The apparatus generates a training unit from the stored training modules in such a way that the dependencies are taken into consideration (specification at page 2).

In support of this rejection, the examiner finds:

... Cook et al discloses a system and method in which an input device is configured to receive an entry from a training participant, a data bank in which a plurality of training modules with and without dependencies upon one another and the dependencies being stored in the data bank also, and a selection device to combine a number of the modules, based upon dependency, into a generated training unit (Col. 5, lines 41-65, Col. 6, lines 1-16) [answer at page 4].

... the Examiner relies upon the teaching in Cook et al that training modules are presented to a student through the use of a plurality of persona that are on-screen software agents (Col 5, lines 25-33) which have access to instructional modules and are customized to individual student behaviors and preferences such that the on-screen personae select those training modules most relevant to each student based upon the dependencies of preferences stored with the training modules (Col 5, lines 42-53). Each such training module is composed of data snips created by artists, animators, singers and so forth (Col 5, lines 55-56) to build data modules to be used in the composition of an on-screen agent, and most importantly, that these data snips can consist of complete pre-formatted animated sequences (Col 5, lines 63-65) presenting information to a student. [answer at pages 6 to 7].

We agree with the appellants that Cook does not describe training modules which have dependencies on each other.

Cook describes a system for providing instruction by utilizing a customized multimedia virtual tutor (col. 1, lines 13 to 17). The virtual tutor modifies its behavior

and appearance on the basis of a history of the student interactions and performance (col. 5, lines 11 to 14). While each of these instruction units, having a virtual tutor with a customized appearance, may be considered a training module as found by the examiner, we agree with the appellants that Cook does not describe that the various training modules or customized virtual tutors have any dependencies one on each other. Therefore, there is no description of the requirement in claim 1 of:

generating a training unit by combining a number of said training modules taking said dependencies of said training modules on each other into consideration.

In view of the foregoing, we will not sustain the rejection of claim 1 or claims 2 to 4 dependent thereon.

We turn next to the examiner's rejection of claim 6 under 35 U.S.C. § 102(e) as being anticipated by Wall. It is the examiner's view that Wall describes:

. . . a training method for automatically determining and meeting the training needs of training participants comprising entering the learning objectives, background knowledge and requested topic of the learning needs of a training participant (Col. 4, lines 22-57), determining all training modules responsive to a user's entry (Col. 5, lines 15-25), identifying selected training modules dependent upon a user's background knowledge and defining a training unit customized to a user from the multiple training modules previously identified (Col. 5, lines 41-67) [answer at page 4].

Appellants argue that there is no automatic culling and combining procedure disclosed in Wall but rather it is up to the user to ultimately select all items to be

included in the training session, even though the user may be assisted in this procedure by a number of prompts.

The examiner does not contest this argument of the appellants. Rather, the examiner argues that claim 6 does not:

recite a training method for *automatically* determining and meeting the needs of training participants. Appellant's claim 6 recites the limitations for a search engine that may be used by a student to identify and recall stored training modules from a database of such elements. [answer at page 8, emphasis in original].

We do not agree with the examiner. Claim 6 clearly recites "automatically determining learning needs of a training participant." In addition, claim 6 recites "from among said training modules responsive to said entry, identifying selected training modules."

In addition, we agree with the appellants that Wall does not describe the feature of automatically determining the learning needs of a training participant. In fact, Wall teaches that the system is flexible so that a student is capable of selecting any lesson plan at will or executing only a portion of a training session at any point in the courseware depending on need, indicating that the selection of the lesson plans or training modules is left up to the student and not done automatically (col. 4, lines 50 to 58).

In view of the foregoing, we will not sustain the examiner's rejection of claim 6 under 35 U.S.C. § 102(e).

We turn lastly to the examiner's rejection of claim 5 under 35 U.S.C. § 103 as being unpatentable over Cook in view of Tatsuoka. Claim 5 is dependent on claim 1 and further recites that the data bank is a data bank containing "a plurality of medical education training modules as said training modules." The examiner has relied on Tatsuoka for describing a combination of modules for training participants for the diagnosis and treatment of medical conditions.

As we stated above, we find that Cook does not describe training modules with dependencies. In addition, Cook does not suggest training modules with dependencies. We have examined the disclosure of Tatsuoka and find that Tatsuoka does not cure the deficiencies of Cook. Therefore, we will not sustain this rejection.

The decision of the examiner is reversed.

*Charles E. Frankfort*  
CHARLES E. FRANKFORT  
Administrative Patent Judge

MURRIEL E. CRAWFORD  
Administrative Patent Judge

  
JENNIFER D. BAHR  
Administrative Patent Judge

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